IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 643 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SIRAJ ALI YAVAR ALI SAIYED

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 643 of 2004

MR MM TIRMIZI for Petitioner No. 1

MS. MITA PANCHAL, APP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 16/07/2004

ORAL JUDGEMENT

Rule. Ms. Mita Panchal, learned APP appears and waives service of notice of rule on behalf of respondent State of Gujarat.

2. By means of filing this petition under Article 226 of the Constitution of India, petitioner who claims to be the owner of Tempo bearing registration No. GJ-7-Y-3936 has brought under challenge the order dated 30.01.2004 passed in Criminal Revision Application No. 92 of 2003 by the learned Sessions Judge Kheda at Nadiad confirming the order dated 15.9.2003 recorded below application tendered by the petitioner for taking back the possession of the said Tempo under the provisions of Section 451 of the Code of Criminal Procedure ('the Code' for short) by the learned JMFC, Khambat by which the learned JMFC has rejected the said application.

3. At the outset, it may be stated that the Driver of the said Tempo at the relevant point of time was intercepted by the Khambat Police Station near Galana Jakatnaka. On inspection, it was found that in the said Tempo cattles were being transported to the slaughter house belonging to one Gulambhai Rasulbhai Hasanbhai Qureshi. Therefore, an FIR against the Driver and Cleaner was registered vide CR No. II-3098/2003 at Khambat Police Station for commission of the alleged offences punishable under Sections 11 (d), (e), (a), and (f) of Prevention of Cruelty to Animals Act, 1960. In pursuance to the registration of the FIR the said Tempo was seized together with animals transported therein by the police personnel and at present lying at Khambat City Police Station.

4. The petitioner, therefore, being the owner of the said Tempo has filed an application under Section 451 of the Code to take back the said Tempo during trial on the conditions that may be imposed upon him. On appreciation and evaluation of police investigation papers and submissions advanced at the bar by the learned advocates appearing for the parties, the learned Magistrate has rejected the said application by recording speaking order.

5. Aggrieved thereby, the petitioner went in revision before the learned Sessions Judge which also met with the same fete, which has given rise to the present petition.

6. Mr. Tirmizi, learned advocate of the petitioner has contended that in case of release of the Tempo in question, the petitioner is ready to abide by all the stringent conditions that may be imposed upon him by this Court. He also contended that the petitioner is the owner of the said Tempo and at the relevant time he was

not travelling in the said Tempo and without his knowledge the Driver has carried cattles in the Tempo in violation of the provisions of the Act.

7. Ms. Mita Panchal, learned APP appearing on behalf of the respondent State of Gujarat has contended that now a days offence under Prevention of Cruelty to Animals Act are increasing day-by-day and if the Tempo is released, the petitioner may again indulge in similar activity. Besides this, this is the second offence committed by the Driver with the same Tempo in a short span of time. She further contended that the powers under Article 226 and 227 of the Constitution of India are to be exercised very sparingly. She, therefore, urged that the petition may be rejected.

8. Having heard learned advocates appearing for the parties and on the facts and in the circumstances emerging from the record of the case, it appears that the petitioner is the owner of the Tempo in question and he has produced the proof thereof before the learned Magistrate. It is an admitted fact that the petitioner was not travelling at the relevant time in the Tempo in question and, if the Tempo is not released, it would remain idle without yielding any income and it may also be deteriorated. It is obvious, that some time would be taken to conclude the trial. Therefore, during pendency of the trial, it is desirable that the possession of the Tempo in question be handed over to its owner by imposing stringent conditions.

9. Hence, the Tempo bearing registration No. GJ-7-Y-3936 lying as Muddamal with Khambat Police Station in connection with the offence registered as CR No. II-3098/2003 punishable under Sections 11(d), (e), (a), and (f) of the Act, shall be returned to the petitioner by way of interim custody pending the trial on the following conditions:

(i) The petitioner shall furnish a solvent surety of an amount of Rs.2 lakhs (Rupees Two lakhs only) with personal bond of the like amount to the satisfaction of the learned Judicial Magistrate First Class, Khambat.

(ii) The petitioner shall file an undertaking before the Judicial Magistrate First Class, Khambat to the effect that the petitioner shall not transfer or part with the possession of the Tempo bearing registration No. GJ-7-Y-3936 without prior permission of the Judicial Magistrate First

Class, Khambat and shall also produce the said Tempo as and when called for by the learned Magistrate during the trial.

(iii) The petitioner shall also file an undertaking before the Judicial Magistrate First Class, Khambat to the effect that the petitioner shall report to the Khambat Police Station on every trip indicating, to which place the petitioner is taking the Tempo and the nature of the goods that may be carried in the Tempo.

(iv) The violation of any of the aforesaid conditions would tantamount to forfeiture of the vehicle without reference being made to the Court.

10. Resultantly, the petition succeeds and accordingly it is allowed. Rule is made absolute to the aforesaid extent. Direct service is permitted.

(A.M.Kapadia,J)

Jayanti*